

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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Majority (202) 225-2927
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July 27, 2018

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Chairman Simons:

On February 14, 2018, the Committee on Energy and Commerce (the Committee) held a hearing on consolidation in the health care industry. During the hearing, Members of the Committee asked questions about consolidation in the Pharmacy Benefit Manager (PBM) industry and the effects of this consolidation on patients and prescription drug costs.¹ The Committee respectfully requests that the Federal Trade Commission (FTC) conduct a retrospective review of past mergers involving PBMs to closely examine and identify (1) how these mergers affected downstream prices for consumers and (2) whether these mergers have helped PBMs save plan sponsors money.

For over a decade, there has been a significant amount of consolidation in the PBM industry. In 2016, the three largest PBMs—CVS Health Corporation/CVS Caremark, Express Scripts Holding Company, and UnitedHealthcare/Optum Rx—accounted for about 70 percent of market revenues, with the two largest PBMs accounting for nearly 52 percent of market revenues.² All three of these PBMs have participated in mergers. For example, CVS Health merged with PBM Caremark in 2007 and acquired long-term care pharmacy services company Omnicare in 2015.³ Two of the largest PBMs in the market in 2012, Medco Health Solutions and

¹ *Examining the Impact of Health Care Consolidation: Hearing Before the Subcomm. On Oversight and Investigations of the H. Comm. on Energy and Commerce*, 115th Cong., Preliminary Transcript, 47 (Feb. 14, 2018), available at <http://docs.house.gov/meetings/IF/IF02/20180214/106855/HHRG-115-IF02-Transcript-20180214.pdf>.

² Evan Hoffman, *IBISWorld Industry Report OD4620 Pharmacy Benefit Management in the US*, at 5 (Nov. 2016).

³ CVS Caremark Corporation, *United States Securities and Exchange Commission Form 10-K, Annual Report for the fiscal year ended December 31, 2008* (Feb. 27, 2009), available at http://otp.investis.com/clients/us/cvs_caremark1/SEC/sec-show.aspx?Type=html&FilingId=6445753&CIK=0000064803&Index=10000; CVS Health Corporation, *United States Securities and Exchange Commission Form 10-K, Annual Report for the fiscal year ended December 31, 2016* (Feb. 9, 2016), available at http://otp.investis.com/clients/us/cvs_caremark1/SEC/sec-show.aspx?Type=html&FilingId=11159630&CIK=0000064803&Index=10000.

Express Scripts Inc., merged in 2012 to create Express Scripts Holding Company.⁴ In 2015, UnitedHealth's Optum Rx increased its market share by acquiring PBM Catamaran.⁵

Consolidation in the PBM industry is part of a larger trend of consolidation in the health care market more generally.⁶ PBMs play a significant role in the health care market and are likely to influence health care costs. There is conflicting information, however, on the impact of PBMs on health care costs for patients. For example, a February 2016 report found that PBMs help plan sponsors generate savings through a variety of different mechanisms including, but not limited to, reducing waste, negotiating rebates from drug manufacturers, negotiating discounts from drugstores, and encouraging the use of generic medicines.⁷ On the other hand, a May 2017 literature review summarized studies finding that, among other things, PBMs have used their market power to try to increase their profits and that PBMs have encouraged higher list prices for prescription drugs that increase co-pays for patients.⁸ Because some mergers may benefit patients while other mergers may harm patients, we believe it is important to closely monitor these trends.⁹

During the Committee's hearing on health care consolidation, one of the witnesses, Dr. Leemore Dafny, testified that consolidation is oftentimes driven by the expectation of a reward for the merging parties and their stakeholders. According to Dr. Dafny, the rewards of consolidation may include: (1) increased bargaining positions for the merging parties that may enable the merging parties to raise prices; (2) economies of scale that produce cost savings; (3) improved reimbursement due to certain reimbursement rules and programs; and (4) additional synergies.¹⁰ When asked whether PBM consolidation may result in increased prices for some prescription medicines, Dr. Dafny suggested that additional research analyzing the effects of

⁴ Evan Hoffman, *IBISWorld Industry Report OD4620 Pharmacy Benefit Management in the US*, at 24 (Nov. 2016).

⁵ *Id.* at 19; UnitedHealth Group, *OptumRx, Catamaran Complete Combination* (Jul 23, 2015), available at <http://www.unitedhealthgroup.com/Newsroom/Articles/Feed/Optum/2015/0723OptumRxCatamaran.aspx>; Anna Wilde Mathews and Joseph Walker, *UnitedHealth to Buy Catamaran for \$12.8 Billion in Cash*, THE WALL STREET JOURNAL (Mar. 30, 2015).

⁶ See, e.g., Medicare Payment Advisory Commission (MedPAC), *Report to the Congress: Medicare and the Health Care Delivery System, Chapter 10: Provider Consolidation: The Role of Medicare Policy*, at 295 (June 2017); Kelsey Oliver, *IBISWorld Industry Report 32541b: Generic Pharmaceutical Manufacturing in the US* (Mar. 2017); Marc-Andre Gagnon and Karen D. Volesky, *Merger mania: mergers and acquisitions in the generic drug sector from 1995 to 2016, Globalization and Health* (2017), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5567637/pdf/12992_2017_Article_285.pdf.

⁷ Visante, *Pharmacy Benefit Managers (PBMs): Generating Savings for Plan Sponsors and Consumers – Prepared for Pharmaceutical Care Management Association* (Feb. 2016), available at <https://www.pcmanet.org/wp-content/uploads/2016/08/visante-pbm-savings-feb-2016.pdf>.

⁸ Wayne Winegarden, Ph.D., *Issue Brief: The Economic Costs of Pharmacy Benefit Managers: A Review of the Literature*, PACIFIC RESEARCH INSTITUTE (May 2017), available at https://www.pacificresearch.org/wp-content/uploads/2017/06/PBM_Lit_Final.pdf.

⁹ See, e.g., *Examining the Impact of Health Care Consolidation: Hearing Before the Subcomm. On Oversight and Investigations of the H. Comm. on Energy and Commerce*, 115th Cong., Preliminary Transcript (Feb. 14, 2018), available at <http://docs.house.gov/meetings/IF/IF02/20180214/106855/HHRG-115-IF02-Transcript-20180214.pdf>.

¹⁰ *Examining the Impact of Health Care Consolidation: Hearing Before the Subcomm. On Oversight and Investigations of the H. Comm. on Energy and Commerce*, 115th Cong., Prepared Testimony of Leemore S. Dafny, Ph.D., at 2 (Feb. 14, 2018), available at <http://docs.house.gov/meetings/IF/IF02/20180214/106855/HHRG-115-IF02-Wstate-DafnyL-20180214.pdf>.

PBM consolidation on consumers would be helpful to answer the question.¹¹ Similarly, another witness at the Committee's hearing, Dr. Martin S. Gaynor, agreed that it would be helpful to have a study, such as a retrospective merger review, examining the effects of consolidation in the PBM industry.¹²

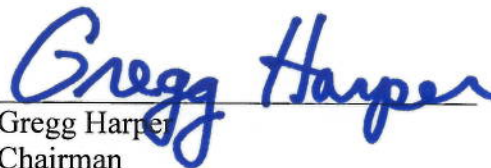
The Committee believes that the FTC should conduct a retrospective review of past PBM mergers to help improve our understanding of the impact of consolidation in the PBM industry and whether past enforcement has been effective. During a recent nomination hearing before the Senate Committee on Commerce, Science, and Transportation, both you and Christine Wilson voiced support for conducting retrospective studies of past mergers to evaluate the effectiveness of the FTC's merger enforcement. On February 14, 2018, you testified that you hoped to establish a merger retrospective program so the Agency could analyze whether its merger enforcement has been as effective as necessary, including in the PBM industry.¹³ Ms. Wilson agreed with you and stated that it would be important to do merger retrospectives "to determine whether we have achieved the right balance in terms of permitting mergers that would allow innovation and economies of scale while at the same time blocking mergers or requiring remedies where they might otherwise cause harm to competition."¹⁴

We therefore respectfully request a response indicating whether the FTC intends to conduct this retrospective study examining past mergers in the PBM industry by August 10, 2018. Please contact Natalie Turner or Lamar Echols of the Committee staff at 202-225-2927 with any questions. Thank you for your prompt attention to this request.

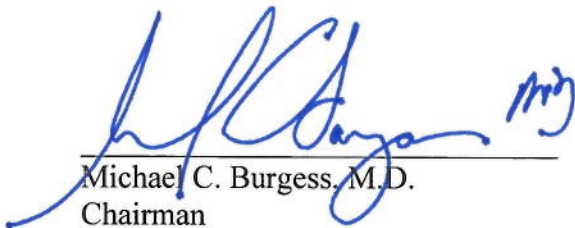
Sincerely,



Greg Walden
Chairman



Gregg Harper
Chairman
Subcommittee on Oversight
and Investigations



Michael C. Burgess, M.D.
Chairman
Subcommittee on Health

¹¹ *Examining the Impact of Health Care Consolidation: Hearing Before the Subcomm. On Oversight and Investigations of the H. Comm. on Energy and Commerce*, 115th Cong., Preliminary Transcript, 47 (Feb. 14, 2018), available at <http://docs.house.gov/meetings/IF/IF02/20180214/106855/HHRG-115-IF02-Transcript-20180214.pdf>.

¹² *Id.* at 47-48.

¹³ *Nomination Hearing Before the S. Comm. on Comm., Science, and Transportation*, 115th Cong. (Feb. 14, 2018), <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=EECF6964-F8DC-469E-AEB2-D7C16182A0E8>.

¹⁴ *Id.*